

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STEVEN BURNHAM, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

QUTOUTIAO INC., ERIC SILIANG TAN,
LEI LI, JINGBO WANG, XIAOLU ZHU,
SHAOQING JIANG, JIANFEI DONG,
OLIVER YUCHENG CHEN, CITIGROUP
GLOBAL MARKETS INC., DEUTSCHE
BANK SECURITIES INC., CHINA
MERCHANTS SECURITIES (HK) CO.,
LTD., UBS SECURITIES LLC, and
KEYBANC CAPITAL MARKETS INC.,

Defendants.

Case No. 1:20-cv-06707-SHS

HOWARD BROWN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

QUTOUTIAO INC., ERIC SILIANG TAN,
LEI LI, JINGBO WANG, XIAOLU ZHU,
SHAOQING JIANG, JIANFEI DONG, and
OLIVER YUCHENG CHEN,

Defendants.

Case No. 1:20-cv-07717-SHS

**MEMORANDUM OF LAW IN SUPPORT OF STEVEN BURNHAM'S MOTION FOR
CONSOLIDATION OF RELATED ACTIONS, APPOINTMENT AS LEAD PLAINTIFF,
AND APPROVAL OF LEAD COUNSEL**

Steven Burnham (“Burnham” or “Movant”) respectfully submits this memorandum of law in support of his motion pursuant to the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) for an Order: (1) consolidating the above-captioned related actions; (2) appointing Movant as Lead Plaintiff under 15 U.S.C. § 77z-1(a)(3)(B) and 15 U.S.C. § 78u-4(a)(3)(B); (3) approving Movant’s selection of Glancy Prongay & Murray LLP as Lead Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v); and (4) granting such other relief as the Court may deem to be just and proper (the “Motion”).

I. PRELIMINARY STATEMENT

This is a class action on behalf of persons who purchased or otherwise acquired Qutoutiao Inc. (“Qutoutiao” or the “Company”): (a) American Depositary Shares (“ADSs” or “shares”) pursuant and/or traceable to the registration statement and prospectus (collectively, the “Registration Statement”) issued in connection with the Company’s September 2018 initial public offering (“IPO” or the “Offering”); and/or (b) securities between September 14, 2018 and July 15, 2020, inclusive (the “Class Period”).

Pursuant to the PSLRA, the person or group of persons with the largest financial interest in the relief sought by the class who satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure is presumed to be the “most adequate plaintiff” – the plaintiff most capable of adequately representing the interests of class members. The PSLRA provides that the Court shall appoint the most adequate plaintiff as lead plaintiff.

Movant believes that he is the “most adequate plaintiff” as defined by the PSLRA and should be appointed as lead plaintiff based on his financial losses suffered as a result of defendants’ wrongful conduct as alleged in this action. In addition, for purposes of this motion, Movant satisfies the relevant requirements of Rule 23 of the Federal Rules of Civil Procedure, as his claims are typical of other class members’ claims and he is committed to fairly and adequately

representing the interests of the class. Thus, pursuant to the PSLRA's lead plaintiff provision, Movant respectfully submits that he is presumptively the most adequate plaintiff and should be appointed as lead plaintiff for the class.

Additionally, Movant's selection of Glancy Prongay & Murray LLP as lead counsel for the Class should be approved because the firm has substantial expertise in securities class actions, and the experience and resources to efficiently prosecute this action.

II. FACTUAL BACKGROUND¹

Qutoutiao offers a mobile application called Qutoutiao (which means "fun headlines" in Chinese) that aggregates articles and short videos from professional media and freelancers and presents customized feeds to users.

In September 2018, the Company completed its IPO in which it sold 13.8 million ADSs at a price of \$7.00 per share.

On December 10, 2019, Wolfpack Research published a report, alleging among other things, that the Company had overstated its revenues by recording non-existent advances from advertising customers. Moreover, the report alleged that Qutoutiao replaced its third-party advertising agent with a related party, thereby bypassing the agent's oversight and allowing the Company to "perpetrate the unmitigated ad fraud that [Wolfpack] observed in [its] sample."

On this news, the Company's share price fell \$0.12, nearly 4%, to close at \$2.86 per share on December 11, 2019, on unusually heavy trading volume.

On July 15, 2020, hosts of a consumer rights gala stated that Qutoutiao had allowed ads on its platform promoting exaggerated or impossible claims from weight-loss products. For example,

¹ This section has been adapted from the complaints filed in the above-captioned actions.

one such ad offered free weight loss products valued at \$14,300 that would help users lose more than 30 pounds a month.

On this news, the Company's share price fell \$0.85, or 23%, to close at \$2.84 per share on July 16, 2020, on unusually heavy trading volume.

On July 17, 2020, Chinese media reported that Qutoutiao's app had been removed from domestic Android app stores.

By the commencement of the above-captioned actions, Qutoutiao's shares were trading as low as \$3.08 per share, a nearly 56% decline from the \$7 per share IPO price.

In the Registration and throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts concerning the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Qutoutiao replaced its advertising agent with a related party, thereby bypassing third-party oversight of the content and quality of the advertisements; (2) that the Company placed advertisements on its mobile app for products whose claims could not be substantiated and thus were considered false advertisements under applicable regulations; (3) that, as a result, the Company would face increasing regulatory scrutiny and reputational harm; (4) that, as a result, the Company's advertising revenue was reasonably likely to decline; and (5) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

III. PROCEDURAL BACKGROUND

On August 20, 2020, Burnham commenced a securities class action lawsuit in this District against Qutoutiao and certain of its officers, captioned *Burnham v. Qutoutiao, Inc., et al.*, Case No. 1:20-cv-06707 (the "*Burnham* Action"). The *Burnham* Action alleges violations of the Securities Act as to the IPO and alleges violations of the Exchange Act as to the Class Period.

On September 18, 2020, plaintiff Howard Brown commenced a substantially similar action in this District against Qutoutiao and certain of its officers, captioned *Brown v. Qutoutiao, Inc., et al.*, Case No. 1:20-cvc-07717 (the “*Brown Action*,” and together with the *Burnham Action*, the “*Related Actions*”). The *Burnham Action* alleges violations of the Securities Act as to the IPO and alleges violations of the Exchange Act as to the Class Period.

In addition to the defendants named in the *Brown Action*, the *Burnham Action* alleges violations of the Securities Act by the underwriters to the IPO.

IV. ARGUMENT

A. The Related Actions Should be Consolidated

Consolidation pursuant to Federal Rule of Civil Procedure 42(a) is proper when actions involve common questions of law and fact. *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990).

Each of the Related Actions presents similar factual and legal issues, as they all involve the same subject matter and present the same legal issues. Each action alleges violations of the Securities Act and the Exchange Act, each presents the same or similar theories for recovery, and each is based on the same allegedly wrongful course of conduct. Because these actions arise from the same facts and circumstances and involve the same subject matter, consolidation of these cases under Federal Rule of Civil Procedure 42(a) is appropriate. *See Pipefitters Local No. 636 Defined Ben Plan v. Bank of America Corp.*, 275 F.R.D. 187, 192 (S.D.N.Y. 2011) (Consolidation is appropriate “if the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation.”).

B. Movant Should be Appointed Lead Plaintiff

The PSLRA provides the procedure for selecting a lead plaintiff in class actions brought under the federal securities laws. The PSLRA directs courts to consider any motion to serve as

lead plaintiff filed by class members in response to a published notice of class action by the later of (i) 90 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 77z-1(a)(3)(B); 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA provides a “rebuttable presumption” that the “most adequate plaintiff”—*i.e.*, the plaintiff most capable of adequately representing the interests of the Class—is the class member that:

- (aa) has either filed the complaint or made a motion in response to a notice . . . ;
- (bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

The presumption in favor of appointing a movant as lead plaintiff may be rebutted only upon proof “by a purported member of the plaintiff class” that the presumptively most adequate plaintiff:

- (aa) will not fairly and adequately protect the interest of the class; or
- (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 77z-1(a)(3)(B)(iii)(II); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

As set forth below, Movant satisfies all of the PSLRA criteria and has complied with all of the PSLRA’s requirements for appointment as lead plaintiff. Movant has, to the best of his knowledge, the largest financial interest in this litigation and meets the relevant requirements of Federal Rule of Civil Procedure 23. In addition, Movant is not aware of any unique defenses Defendants could raise against him that would render him inadequate to represent the Class.

Accordingly, Movant respectfully submits that he should be appointed lead plaintiff. *See Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 397 (S.D.N.Y. 2008).

1. Movant Filed a Timely Motion

In addition to filing the above-captioned action, Movant has made a timely motion in response to a PSLRA early notice. On August 20, 2020, pursuant to the PSLRA, notice was published in connection with this action. *See* Declaration of Gregory B. Linkh (“Linkh Decl.”), Ex. A. Therefore, Movant had sixty days (until October 19, 2020) to file a motion to be appointed as lead plaintiff. As a purchaser of Qutoutiao ADSs pursuant and/or traceable to the IPO and securities during the Class Period, Movant is a member of the proposed class and has hereby timely filed a motion for appointment as lead plaintiff within sixty days of the notice, in compliance with the PSLRA. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I)(aa); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa).

Additionally, as set forth in the previously-filed certification, Movant attests that he has reviewed the complaint, adopts the allegations therein, and is willing to serve as a representative of the class. *See* Dkt. No. 1. Accordingly Movant satisfies the first requirement to serve as lead plaintiff for the class.

2. Movant Has the Largest Financial Interest

The PSLRA requires a court to adopt the rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 77z-1(a)(3)(B)(iii); 15 U.S.C. § 78u-4(a)(3)(B)(iii). At the time of this filing, Movant believes that he has the largest financial interest among Class members who filed timely applications for appointment as lead plaintiff and are presumed to be the “most adequate plaintiff.”

As a result of the revelations of the fraud described above, Movant suffered substantial financial losses. *See* Linkh Decl., Ex. B. To the best of his knowledge, Movant is not aware of any

other Class member that has filed a motion for appointment as lead plaintiff who claims a larger financial interest. As such, Movant believes he has the “largest financial interest in the relief sought by the Class,” and thus satisfies the second PSLRA requirement to be appointed as lead plaintiff for the Class. *See Varghese*, 589 F. Supp. 2d at 396.

3. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure

The PSLRA further provides that in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *See In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001). Rule 23(a) generally provides that a class action may proceed if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a).

In making its determination that a lead plaintiff candidate otherwise satisfies the requirements of Rule 23, “typicality and adequacy of representation are the only provisions [of Rule 23] relevant to the determination.” *City of Monroe Employees’ Ret. Sys. v. Hartford Fin. Svcs. Group, Inc.* 269 F.R.D. 291, 296 (S.D.N.Y. 2010). At the lead plaintiff stage of the litigation, a movant need only make a preliminary showing that they satisfy Rule 23’s typicality and adequacy requirements. *Id.* at 296-97 (citing *In re eSpeed, Inc. Sec. Litig.*, 232 F.R.D. 95, 102 (S.D.N.Y. 2005); *Kuriakose v. Federal Home Loan Mortg. Co.*, No. 1:08-cv-7281 (JFK), 2008 WL 4974839, at *5 (S.D.N.Y. Nov. 24, 2008).

a) Movant's Claims Are Typical

The Rule 23(a) typicality requirement is satisfied when a plaintiff's claims arise from the same event, practice or course of conduct that gives rise to other class members' claims, and plaintiff's claims are based on the same legal theory. *See Kuriakose*, 2008 WL 4974839, at *4. Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.*

Movant's claims are typical of the claims asserted by the proposed members of the Class. Like all members of the Class, Movant alleges that Defendants' material misstatements and omissions concerning Qutoutiao's business, operations, and financial prospects violated the federal securities laws. Movant, like all members of the Class, purchased Qutoutiao securities in reliance on Defendants' alleged misstatements and omissions and were damaged thereby. Accordingly, Movant's interests and claims are "typical" of the interests and claims of the Class.

b) Movant Is An Adequate Representative

"The adequacy requirement is satisfied where: (1) class counsel is qualified, experienced, and generally able to conduct the litigation; (2) there is no conflict between the proposed lead plaintiff and the members of the class; and (3) the proposed lead plaintiff has a sufficient interest in the outcome of the case to ensure vigorous advocacy." *City of Monroe*, 269 F.R.D. at 297.

Movant has demonstrated his adequacy by retaining competent and experienced counsel with the resources and expertise to efficiently prosecute this action, and his financial losses ensure that he has sufficient incentive to provide vigorous advocacy. *See Linkh Decl.*, Ex. B. Movant is not aware of any conflict between his claims and those asserted on behalf of the Class. As such, Movant is well-equipped to represent the class.

C. The Court Should Approve Lead Plaintiff's Choice of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only to approval of the Court. *See* 15 U.S.C. § 77z-1(a)(3)(B)(v); 15 U.S.C. § 78u-4(a)(3)(B)(v); *In re*

Cendant Corp., 264 F.3d at 274. Thus, the Court should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of the class." 15 U.S.C. § 77z-1(a)(3)(B)(iii)(II)(aa); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Here, Movant has retained Glancy Prongay & Murray LLP as lead counsel to pursue this litigation on his behalf and will retain the firm as the Class's lead counsel in the event he is appointed lead plaintiff. Glancy Prongay & Murray LLP possesses extensive experience in securities class actions and has successfully prosecuted numerous securities fraud class actions on behalf of injured investors, as reflected by the firm's résumé attached to the Linkh Declaration as Exhibit C. Thus, the Court may be assured that, by granting the Motion, the Class will receive the highest caliber of legal representation.

V. CONCLUSION

For the foregoing reasons, Steven Burnham respectfully requests that the Court grant his Motion and enter an Order (1) consolidating the Related Actions; (2) appointing Movant as Lead Plaintiff; (3) approving Movant's selection of Glancy Prongay & Murray LLP as Lead Counsel for the Class; and (4) granting such other relief as the Court may deem just and proper.

Respectfully submitted,

DATED: October 19, 2020

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PROOF OF SERVICE

I, the undersigned say:

I am not a party to the above case and am over eighteen years old.

On October 19, 2020, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of New York, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 19, 2020, at New York, New York.

/s/ Gregory B. Linkh
Gregory B. Linkh